BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinions Below.

No opinion was filed by the County Court of Lake County, Illinois, but a memorandum of its decision appears in the record, pages 23 to 25. The opinion of the Supreme Court of the State of Illinois is reported in 374 Ill. 536, 30 N. E. (2d) 28. (Appendix B.)

Jurisdiction.

The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code as amended. 28 U. S. C. A. 344 (b).

The Supreme Court of the State of Illinois (being the highest Court of the State of Illinois), on October 11, 1940, reversed and remanded a judgment entered by the County Court of Lake County, Illinois. Petition for rehearing was duly filed and said petition was denied on December 4, 1940.

A certified transcript of record, the petition for the issuance of a writ of certiorari, and a supporting brief annexed thereto are filed herein with the clerk of the Court within three (3) months after denial of said petition for rehearing by the Supreme Court of Illinois.

Statement of the Case.

The essential facts have been fully set forth in the petition under the caption "Summary and Short Statement of the Matter," which is hereby adopted. Any necessary elaboration of the facts involved will be covered in the argument to follow.

Specification of Assigned Errors.

The Supreme Court of the State of Illinois erred:

1. In reversing the judgment of the County Court of Lake County, Illinois.

2. In disregarding the validity of a prior judgment duly entered by the District Court of the United States, for the Northern District of Illinois, Eastern Division.

3. In holding certain bonds void, which had theretofore been adjudicated valid and binding by judgment of the District Court in a proceeding wherein said Court had jurisdiction of the subject matter, the parties and the cause.

4. In failing to hold that the decision of the District Court was *res judicata* as to the validity of the bonds.

5. In failing to recognize the provisions of Section 905, United States Statutes, 28 U. S. C. A. 687.

SUMMARY OF ARGUMENT.

I.

Petitioner, by virtue of Section 237 (b) of the Judicial Code, as amended, is entitled to have a writ of certiorari issued.

II.

The judgment of the United States District Court, for the Northern District of Illinois, Eastern Division, in the case of Ohio National Life Insurance Company v. Grant Community High School District No. 124, is res judicata as to the matters involved in this case and the validity of the bonds, questioned therein, and is binding on the taxpayers of said school district.

ARGUMENT.

May It Please the Court:

I.

The District Court of the United States in 1936 entered judgment in favor of a bondholder against the school district for interest due on certain of its bonds. The validity of said bonds was an issue in the case. Subsequently the Supreme Court of Illinois, in this case held the identical bonds void and in so holding refused to recognize the validity of the judgment of the District Court in express language as follows:

> "this court cannot recognize the claim of appellees that the decision of the Federal court is controlling here."

This Court has repeatedly held that where the highest Court of a State disregards a judgment or decree of a Court of the United States, a federal question is thereupon raised which is reviewable by this Court under Section 237 (b) of the Judicial Code, 28 U. S. C. A. 344 (b).

In the recent case of *Stoll* v. *Gottlieb* (1938), 305 U. S. 165, 83 L. ed. 104, this Court stated:

> "This certiorari was allowed to review a judgment of the Supreme Court of Illinois. That court had denied effect to a plea of *res judicata* arising from orders of a district court in bankruptcy. Provisions declaring the supremacy of the Constitution and the extent of the judicial power and authorizing necessary and proper legislation to make the grants effective confer jurisdiction upon this Court to determine the effect to be given decrees of a court of the United States in state courts. As the contention is that the

> ruling below disregarded decrees of a court of the United States it raised a federal question reviewable under No. 237 (b) of the Judicial Code, 28 U. S. C. A. No. 344 (b)."

See also *Dupasseur* v. *Rochereau*, 88 U. S. 130, 22 L. ed. 588; *Crescent City etc. Co.* v. *Butchers Union etc.*, 120 U. S. 141, 39 L. ed. 614; *Motlow* v. *Missouri*, 295 U. S. 97, 79 L. ed. 1327; United States Revised Statutes, Section 905, 28 U. S. C. A. 687.

II.

After the decision of the Supreme Court in 1934, in the case of *People* v. *Orvis*, 358 Ill. 408, 193 N. E. 213, in which the Supreme Court held (in a tax objection proceeding between the State and the taxpayer) that a tax levied to pay these bonds was void, the General Assembly of the State of Illinois passed an act, in 1935, which validated all of the proceedings leading up to the issuance of said bonds. The District Court case was not filed until after the validating act was in full force and effect. In the complaint filed in the District Court the validating act was set forth in full, and during the trial of the case was considered by the Court. The effect of the decision of the District Court, which entered a judgment for the bond interest then past due, was that the bonds were validated by said act of the General Assembly and were a valid and binding obligation of the School District. Prior to the District Court case the validating act had not been construed or adjudicated by any Court.

In total disregard of the judgment of the District Court the Supreme Court of Illinois erroneously stated in this case:

> "When this cause was presented to the Federal District Court the law in this State was that these bonds are illegal."

Such statement could only have been true if the validating act in question had been held void theretofore by the State Court. It had not, and, therefore, the Federal District Court had just as complete original jurisdiction to determine that question, as would the State Court had the suit been brought there. The jurisdiction of both Courts was concurrent to entertain the cause. The Federal Court having obtained jurisdiction, its judgment is valid, entitled to full faith and credit and *res judicata* in any other court. In *Stoll* v. *Gottlieb, supra,* Mr. Justice Reed stated at page 107:

> "The Congress enacted, as one of the earlier statutes, provisions for giving effect to the judicial proceedings of the courts. This has long had its present form. This statute is broader than the authority granted by Article Four, section one, of the Constitution to prescribe the manner of proof and the effect of the judicial proceedings of states. *Under it the judgments and decrees of the Federal courts in a state are declared to have the same dignity in the courts of that state as those of its own courts in a like case and under similar circumstances.*" (Italics ours.)

The respondent was bound by the decision of the District Court because he is a taxpayer of the Grant Community High School District No. 124, in Lake County, Illinois, which was the defendant in the United States District Court case. *Harmon* v. *Auditor of Public Accounts,* 123 Ill. 122, 13 N. E. 161; *The People* v. *C. B. & Q. R. R. Co.,* 247 Ill. 340 at 345, 93 N. E. 422 at 424; *Pear* v. *City of East St. Louis,* 273 Ill. 501 at 506, 113 N. E. 60 at 62; *Worley* v. *Idleman,* 285 Ill. 214 at 221, 120 N. E. 472 at 475; *People* v. *Ford,* 289 Ill. 550, 124 N. E. 549; *People* v. *Clark,* 296 Ill. 46, 129 N. E. 583; *People* v. *L. & N. R. R. Co.,* 350 Ill. 274 at 277-278; 183 N. E. 233 at 235.

In the case of *People* v. *Ford,* 289 Ill. 550 at 555, 124 N. E. 549 at 552, the Illinois Supreme Court said:

> "A judgment against a municipality for an obligation is binding upon every citizen who is compelled to discharge the obligation, and every taxpayer is a real, though not a nominal, party to the judgment and cannot dispute its validity. Freeman on Judgments (3d ed.) 178; *Harmon* v. *Auditor of Public Accounts,* 123 Ill. 122; *County of DeWitt* v. *Leeper,* 209 *id.* 133; *North Fork Drainage District* v. *Rector Special Drainage District,* 266 *id.* 536."

In the case of *Harmon* v. *Auditor of Public Accounts,* 123 Ill. 122, 13 N. E. 161, the Court citing from Freeman on Judgments:

> "A judgment against a county, or its legal representatives, is a matter of general interest to all its citizens, is binding upon the latter, though they are not parties to the suit. A judgment for a sum of money rendered against a county imposes an obligation against the citizens which they are compelled to discharge. Every tax-payer is a real, though not a nominal, party to such judgment. If, for the purpose of providing for its payment, the officers of the county levied and endeavored to collect the tax, none of the citizens can, by instituting proceedings to prevent the levy or enforcement of the tax, dispute the validity of the judgment nor re-litigate any of the questions which were or which could have been litigated in the original action against the county."

This is the leading case in Illinois, and is referred to in later cases in Illinois and other states as one which correctly states the law that a judgment against a municipality is binding on all of the taxpayers therein.

In the case of *Pear* v. *City of East St. Louis,* 273 Ill. 501, 113 N. E. 60 at 62, a suit was instituted by a taxpayer to declare void a franchise held by a water company. Prior to the institution of that suit there had been a decision by a

Federal Court in which the water company had instituted action against the City of East St. Louis to have the ordinance declared valid. The Federal Court judgment held the ordinance valid and the Supreme Court of Illinois, at page 506 said:

> "The suit in the Federal Court involved the question whether the city was bound by ordinance No. 1972, and the decision of that question depended upon whether it was a legal ordinance and whether it had the power to repudiate and repeal it. This was a matter of general interest to all the tax-payers of the city, and though complainant was not personally made a party to that suit, his rights as a tax-payer will be deemed to have been as effectually presented and protected as if he had been personally present. The issues in that case involved the right of the tax-payers to be relieved of the obligations imposed by the ordinance, which is the same question involved in this case. It is not claimed complainant has sustained or will sustain any wrong or injury different from that sustained by the tax-payers of the city generally. The precise questions raised in this case were or might have been adjudicated in the case in the Federal court. Complainant was a party to that suit by representation and the decree is binding upon him. *Harmon* v. *Auditor of Public Accounts*, 123 Ill. 122; *Hale* v. *Hale*, 146 *id.* 227; *McCampbell* v. *Mason*, 151 *id.* 500; *County of DeWitt* v. *Leeper*, 209 *id.* 133; *Healy* v. *Deering*, 231 *id.* 423; *Ward* v. *Field Museum*, 241 *id.* 496; *People* v. *Harrison*, 253 *id.* 625."

In conclusion, we submit that if the Supreme Court of Illinois is permitted to disregard said judgment of the District Court, the right of a citizen of the United States to have his rights adjudicated by a Court set up under authority of the United States, is in effect abrogated.

For the foregoing reasons it is respectfully submitted that the writ of certiorari prayed by the petitioner should be granted.

Respectfully submitted,

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